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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-first session

PROVISIONAL SUMMARY RECORD OF THE 945th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 6 August 1992, at 3 p.m.

Chairman: Mr. VALENCIA RODRIGUEZ

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The meeting was called to order at 3.15 p.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (item 7) (continued)

Fifth periodic report of Colombia (CERD/C/191/Add.1) (continued)

1. At the invitation of the Chairman, Mr. Mestre Sarmiento and Mrs. Galvis (Colombia) took places at the Committee table.

2. Mr. van BOVEN said he wished first of all to welcome the Colombian Government's participation in the activities of human rights bodies. For example, the Government had on several occasions, invited working groups, such as the Working Group on Enforced or Involuntary Disappearances of the Commission on Human Rights, and rapporteurs such as the Special Rapporteur of the Commission on Human Rights on the question of torture, to visit Colombia. It was all the more regrettable that those various efforts had been so unproductive, particularly with regard to protection of the right to life and security of person.

3. It could be seen from a reading of the report under consideration (CERD/C/191/Add.1) that indigenous groups, like the rest of the population, suffered from the acts of violence perpetrated in Colombia. He would like to know to what extent the indigenous populations were affected by the violence, whether they were its sole victims, or whether they also participated in it. The report also contained little information on the black population and immigrants.

4. He noted with satisfaction that ecological issues were taken into consideration in the implementation of certain projects and that other projects which were harmful to the environment had not been carried out.

5. It was also stated, in paragraph 21 of the report under consideration, that indigenous groups were scattered throughout 25 per cent of Colombian territory and had their own social and cultural world, while paragraph 29 referred to reservations (resguardos); it was permissible to ask whether the necessary conclusion was that the reservations occupied 25 per cent of Colombian territory or whether there were concentrations of indigenous people in other regions of the country. He considered that the question of reservations was a specific issue which should perhaps be considered jointly with the Working Group on Indigenous Populations of the Sub-Commission on the Prevention of Discrimination and Protection of Minorities.

6. Mention should also be made of a contradiction between paragraph 12 of the report, which stated that Colombia had acceded to ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries and that it had incorporated that instrument in its domestic legislation, and paragraph 56, where it was stated that the Congress of the Republic would undertake to adopt and ratify that Convention. He would welcome clarification on that issue.

7. He also noted that article 4 of the Convention was not being implemented in the requisite fashion, since domestic legislation in that regard was inadequate in respect of the obligations undertaken under the provisions of that article.

8. Concerning the implementation of article 5 of the Convention, he noted that the information contained in the report related basically to civil and political rights, and scarcely at all to economic, social and cultural rights. It was to be hoped that the next report from Colombia would contain more information on the exercise of the latter rights.

9. With reference to article 6 of the Convention, he noted that the Colombian Government had given little information about the recourses available to the victims of discrimination for obtaining compensation; it would be desirable if the Colombian authorities were to furnish more details in that respect in their next report.

10. In conclusion, he expressed the hope that Colombia would decide in the near future to make the declaration provided for in article 14 of the Convention.

11. Mr. ABOUL-NASR, referring to paragraph 24 of the report under consideration, said that the distinction made between the State, the indigenous peoples and society was disturbing. The indigenous population was in fact part of society and could not be dissociated from it.

12. He considered that, contrary to what was stated in paragraph 48 of the report, the policy for the protection of the rights of the indigenous peoples should be separated from the measures taken for the conservation and preservation of the environment. Indigenous persons were human beings who had rights and not a disappearing species whose survival was closely linked to protection of the environment.

13. Mr. MESTRE SARMIENTO (Colombia) thanked the members of the Committee for the interest they had shown in the report under consideration and in the situation in Colombia.

14. Before replying to the questions asked by members of the Committee, he wished to present some explanations regarding certain comments they had made. First of all, the report itself was a document which had been prepared just over a year previously by a country which had embarked on an extremely complex political process. The Constituent Assembly responsible for drafting a new Constitution had been democratically elected in 1990. The stakes involved in that process were vital to the country's future, which explained why the authors of the report had stressed that point. He acknowledged, however, that there were gaps in the report, and he would inform the competent authorities in order to enable them to fill in those gaps.

15. Referring to the comments made by Mr. Wolfrum to the effect that, in order to understand the situation in Colombia, it was necessary to take into account the transitional regime in which it now found itself, he regretted that the rapporteur for his country's report had not clarified his idea by stating what transition was involved. He also wished to emphasize that the Colombian authorities had never craved the indulgence of any United Nations body in the consideration of its reports on the grounds of the problems confronting the country. All they wanted was an objective assessment of the situation. Colombia was a democratic and open country which was not afraid to air the problems it faced, such as drugs or violence. There was no perfect democracy, there were only perfectible democracies.

16. With regard to discrimination, he pointed out that that was a concept of the colonial Powers and not of countries such as Colombia which had experienced miscegenation.

17. In connection with the indigenous peoples, it should be recalled that Colombian territory extended over 1 million sq. km, only one third of which belonged to civilization of the Western type. That third was inhabited by 90 per cent of the population. The indigenous groups, which had survived the conquests of the fifteenth, sixteenth and seventeenth centuries, lived in the two enormous basins of the Amazon and the Orinoco. Those regions were difficult of access and the integration of such groups had been the constant concern of the country's authorities. It was not a question of preserving

them or of establishing a discriminatory regime, but of protecting them against exploitation and massive deforestation and of helping them to conserve their habitat and their culture.

18. He also disagreed strongly with the interpretation given by Mr. Wolfrum of his remarks on environmental protection. He recalled that, some years previously, UNESCO had included Cartagena in the heritage of mankind, and it would never have occurred to him that that could be a strategem of the colonial Powers aimed at laying hands on that magnificent city. In fact, the whole planet was the heritage of mankind, and it was up to both the international community and each individual country to endeavour to preserve it. In that connection, the Amazon Basin was undoubtedly of cardinal importance for the climate and the environment, but there was no question of Colombia renouncing its sovereignty or rights, or of its derogating from its international obligations.

19. Referring to the questions raised, and first of all to that of the representation of indigenous inhabitants in the Constituent Assembly, he said it should be pointed out that the two indigenous people who were members of the Constituent Assembly had been appointed during elections in which the entire Colombian population had participated. On the other hand, the representation of indigenous people in Congress derived from a constitutional guarantee. Article 171 of the Constitution stated that the Congress consisted of 100 members elected in the ordinary constituencies and two members elected in the special constituencies by the indigenous communities. Taking into account the change in the status of certain territories in the indigenous regions, which had become departments, the number of indigenous inhabitants in the Chamber of Representatives had increased.

20. Regarding the status of international instruments in domestic law, it should be pointed out that international legal instruments prevailed over domestic legislation and that national laws must comply with international law.

21. In connection with the agreement on demobilization and disarmament signed by the Government and the Quintin Lame Armed Indigenous Movement, and with the question of guerrilla warfare, it should be mentioned that the phenomenon had begun to emerge at the end of the 1950s. By the end of the 1980s there had been six guerrilla groups, the most important of which, in descending order,

had been the Revolutionary Armed Forces of Colombia, the National Liberation Army, the 19 April Movement (M19), the People's National Liberation Army and the Quintin Lame Armed Indigenous Movement. Since assuming power, President Virgilio Barco had pursued a policy of peace which had begun to bear fruit at the end of his term of office with the peace agreement between the Government and the M19 Movement. The Movement had become a political party which was now represented in the Government, in Congress and in the Constituent Assembly and which enjoyed widespread acceptance among the population. Two other movements, the Revolutionary Armed Forces of Colombia and the National Liberation Army, were continuing guerrilla warfare and peace efforts had so far been unsuccessful. Guerrilla activity and violence in Colombia were now linked to the social and economic phenomenon of narcotics.

22. There would seem to have been a marked increase in poppy cultivation in the country, particularly in the Department of Cauca. A cooperation agreement had been signed between the Government and the indigenous communities to combat the phenomenon. The problem of drugs, none the less, went beyond the frontiers of Colombia and was an international problem. No single country, however powerful, could tackle it without the cooperation of the international community and unless there was a special international tribunal with responsibility for trying cases involving the crime of drug trafficking. The youth of the wealthy countries could not be rescued by persecuting Colombian peasants. Colombia had already paid a heavy price as a result of the narcotics traffic. Judges, candidates for the Presidency of the Republic, advisers and many citizens had been assassinated. The drugs trade was now closely linked with guerrilla activities. The laboratories required for poppy processing and the landing strips essential for transporting the merchandise were often to be found in very isolated regions, controlled by the guerrilla movements, which were used by the traffickers to protect their traffic. It should not, however, be forgotten that coca leaf was also a cultural phenomenon in the Andean region, where it was a part of daily life among the indigenous peoples, who used it for medicinal purposes. In that connection it should be recalled that, at the previous World Health Assembly, the President of Bolivia had proposed that an organization such as the World Health Organization should be entrusted with research into the medicinal properties

of coca leaf. What had transformed that traditional crop into a problem was the arrival of chemists with their products essential for the manufacture of coca paste.

23. A question had also been raised regarding mining, and in particular the deposits of hydrocarbons and coal on indigenous land. Colombian legislation was clear on that issue: any mine situated on land governed by title predating 1986 belonged to the owner of the land in question. In other cases, the subsoil resources belonged to the nation. Two cases had arisen of communities wishing to assert their mining rights. The first was a population of indigenous origin which claimed rights over a substantial coalmine situated in the Department of Guajira; so far the community had obtained a ruling that income from the exploitation of the mine was to be paid into a frozen account, pending settlement of the issue in court. The second case related to the recent discovery of an exceptionally promising petroleum deposit in the Department of Casanare over which an indigenous community had asserted its rights. If it won its case in the courts, it would be the owner of the deposit; if not, ownership of the deposit would revert to the nation, but even then, the community concerned would benefit from the exploitation of the deposit, since the operator would have to pay dues to the municipalities situated on the land concerned.

24. Some members had regretted the absence of statistics on the indigenous communities, such as average income in comparison to the rest of the population, life expectancy, etc. Such information should be submitted separately, and Colombia would endeavour to provide it in its next report. However, it should be stressed that statistics concerning such communities were of relatively recent date: as could be seen from paragraph 29 of the report, the great majority of resguardos had originated after 1967. Most of the ethnic groups lived in great isolation, in underpopulated regions. The State had tried to make the basic elements of welfare available to them, but it was clear that, because of their precarious living conditions, it was difficult for them to derive maximum benefit and that their average income was probably very low.

25. Mrs. GALVIS (Colombia), referring to the events in Chocó in May 1987, stressed that that conflict, which was the concern of the Presidential Adviser for Human Rights, had not related to mining deposits and had not been a confrontation between indigenous communities and the Government, but had

rather been a matter of rivalries between two neighbouring tribes in Chocó. The Government had acted as arbitrator and tried to reconcile the two parties and to restore peace and security, in compliance with the function entrusted to it, which it would continue to fulfil. Colombia had kept the competent international bodies duly informed of those events, and she was surprised that a question had been raised on the issue at the previous meeting.

26. The Colombian Constitution recognized the international instruments ratified by the Government, and in particular the Convention, as sources of law which could be invoked before the country's courts. Referring to article 4 of the Convention, she said it was true that the crime of racial discrimination was not specifically provided for in the Colombian texts, apart from the relevant provisions of the Penal Code. Colombian society was, however, basically miscegenated, and the very notion of racism was totally alien to it. For her part, in her career as a lawyer, she could not recall ever having heard a reference to complaints of racial discrimination. Of course, that was not to say that there were no inequalities in Colombia, but they were due to other reasons. The text guaranteed "all persons", and therefore each member of all the ethnic groups and all the cultures which made up Colombian society, the same fundamental rights in all fields. The problem of racism did not have the same dimension as it did elsewhere, in multi-ethnic societies, so that the problem of defining and penalizing racial discrimination in terms of criminal law had not been regarded as a priority by the legislature. To accord the same treatment to all was natural in Colombia, whose population took pride in constituting a "universal race". The Colombian Government would, however, be informed of the Committee's wish that greater attention should be paid to article 4 of the Convention.

27. She also explained that the traditional territorial unit of the indigenous communities was the resguardo, a district of colonial origin which the Government had not yet abolished, since it made it possible to preserve the cultural unity of the indigenous inhabitants. The resguardos were not reservations or other places where indigenous people were brought together, as seen elsewhere. They were administrative units which were intended to encourage the preservation of the indigenous communities and which were comparable, particularly at the administrative and judicial level, to municipal authorities. Under the Colombian Constitution, such territorial units were regarded as full-fledged municipalities. As had been said at the

previous meeting, the resguardos had their own administration and were subject to the authority of an indigenous governor who was really a chief executive responsible for promulgating and implementing the law and for establishing a judicial system compatible with the practices of the community concerned, the sole restriction being compliance with the national Constitution. The report spoke of resguardos, but it would be noted that the Constitution used the expression "indigenous territories", which were on the same level as the municipalities. As far as relations between the resguardos and the central Government were concerned, mention might be made of the agreement concluded very recently between the Government of the indigenous territory to the north of Cauca and the central Government on the elimination of poppy cultivation.

28. In connection with land distribution, it should be pointed out that, once land was allotted, it was the indigenous communities that took responsibility for its management, with complete autonomy. The ownership of land was subject to the land-ownership system of the indigenous population; the Government favoured the development of communal ownership, which was the traditional system among those communities and the system to which they were attached.

29. In that connection it was to be noted that foreign elements had arrived in northern Cauca, where they had encouraged the indigenous inhabitants to cultivate the poppy. The central Government, however, had made direct contact with the indigenous governor to assess the problem, and an agreement had been concluded by which the indigenous people, aware of the dangers of the situation they had ventured into, had undertaken to abandon poppy cultivation and return to traditional community work, while the central Government had established a committee consisting of representatives of the indigenous people and members of the central administration in order to initiate a programme of substitution for poppy cultivation, to create an infrastructure of services and to develop the production system. If the Committee so wished, the text of the agreement could be communicated to it.

30. Mention had also been made of the problem of timber exploitation. The National Institute of Renewable Natural Resources and the Environment (INDERENA) had taken measures to restrain large-scale multinational concerns and to halt deforestation, of which the indigenous populations were the primary victims. INDERENA had promulgated extremely strict regulations on timber felling, requiring that persons authorized to exploit the forest must at the same time carry out appropriate replanting; measures to protect fauna

had also been taken. Much remained to be done, however, to protect the forest, indigenous land and the environment as a whole, and Colombia was endeavouring to fulfil its international commitments in that regard.

31. Mention had also been made of the registration of births and deaths of indigenous peoples. Under the provisions of the Constitution, each Colombian was entitled to legal personality, so that all births and deaths without exception must be registered with a district notary. Another question related to the percentage of the electorate availing itself of the right to vote; in Colombia, voting was not compulsory, but rather a right which everyone could claim from the age of 18 years. The rate of abstention was established at each election. In any case, the Constitution guaranteed the right to vote to all, including of course indigenous people.

32. The Colombian programme of bilingual education had been launched in 1975. It had been greatly extended since then, with the cooperation of the French National Institute for Scientific Research, which had contributed to the training of ethnolinguists. That had made it possible to set up a team responsible for training specialized teachers to provide bilingual instruction to the indigenous peoples.

33. Various seminars had been held to that end in different parts of Colombia. Thanks to the action taken by the new indigenous administration, the different communities themselves would have the possibility of organizing instruction in their respective territories - and likewise health services - with the assistance of the competent ministries.

34. In connection with the declaration provided for in article 14 of the Convention, she said that the Colombian Government still had the matter under review and would communicate its conclusions to the Committee in its next report. Finally, she would ensure that replies were forthcoming to the other questions raised when she had been able to transmit them in writing to her country's authorities.

35. Mr. MESTRE SARMIENTO (Colombia), referring to the important decision taken by the Colombian Government to protect ecosystems and to respect the rights of the indigenous inhabitants in the Amazon area, said that the decision, which was referred to in paragraph 26 of the report, must aim at entrusting the development of the Amazon Basin to the communities that had always lived there. It seemed to him that that was the best way of preserving a resource vital to all mankind and of complying with his country's commitment

to the international community to protect both the human resources - the ethnic groups living in the region - and the natural resources of the Amazonian forest, which covered a fifth of Colombian territory.

36. In the absence of the requisite statistics, he was unable to reply to certain of the questions raised, but would not fail to communicate them to his Government.

37. Mr. WOLFRUM said that he wished to take up some points which had just been made. First of all, with regard to preservation of the common heritage of mankind, it was evident that the commitment undertaken by Colombia to protect the Amazonian forest and the peoples who lived there was extremely positive and that many countries should follow that example. Secondly, on a number of occasions the issue had been raised of what should be understood by "racial discrimination". In particular, it had been said that the phenomenon was linked to the domination of the colonial Powers and that multi-ethnic societies were free from racial discrimination. Colombia was far from being the only multiracial society scrutinized by the Committee; in such countries as Canada, which also took pride in being a multi-ethnic society, there could be no denying that there was racial discrimination, in the very broad sense covered by the Convention. The commitment undertaken by States under article 2, paragraph 1 (c), of that instrument was extremely broad and very few societies, seen in that perspective, could claim to be exempt from that scourge.

38. The Colombian delegation had also stated that its country was currently confronting the same difficulties as many other democracies. In that connection, he read out the conclusions adopted by consensus by the Human Rights Committee on 14 July 1992, which affirmed that the violence in Colombia (murders, torture, disappearances), although diminishing, continued to cause concern, as did the impunity enjoyed by the law enforcement authorities: in such circumstances it would be difficult to refer to "normal" problems of a democracy. In that regard he would have welcomed information on the incidents that had occurred in the Department of Cauca, where some 20 Indians had recently been killed by military or paramilitary groups.

39. It would also be recalled that the question of the implementation of article 4 of the Convention had already been brought to the attention of the Colombian Government during the consideration of previous reports.

40. Finally, the representative of Colombia had rejected his (Mr. Wolfrum's) use of the expression "period of transition" in regard to Colombia: that, however, was the term used recently by a representative of Colombia in the Human Rights Committee.

41. Mr. YUTZIS emphasized that a country such as Colombia did not experience the type of systematic racism to be encountered in the countries of the North; the contexts were different and the forms more subtle. In that country, as in other Latin American countries, what was to be seen was rather a stratification of society which might coincide with skin colour. The reasons for that should be studied. To obtain a clearer view, statistics were necessary, and the Committee should receive them in order to have a basis for its conclusions.

42. Mr. Mestre Sarmiento and Mrs. Galvis (Colombia) withdrew.

Ninth and tenth periodic reports of Chile (CERD/C/196/Add.1)

43. The CHAIRMAN announced that, for the consideration of the ninth and tenth periodic reports of Chile, the Chilean delegation would consist of Mr. Bengoa, Director of the Special Commission for Indigenous Peoples in Chile, and Mr. Oyarce, Counsellor to the Permanent Mission of Chile at Geneva.

44. At the invitation of the Chairman, Mr. Bengoa and Mr. Oyarce (Chile) took places at the Committee table.

45. Mr. BENGOA (Chile) drew attention to the historical outline in chapter I of his country's report (CERD/C/196/Add.1), which described the evolution of the Indian peoples, pointing out in particular that in paragraph 23 it was acknowledged that "throughout the republican history of Chile there has been discrimination against the Mapuches". It was further recognized that the Aymaras, who lived in the north of the country, and the Rapanui inhabitants of Easter Island had also suffered discrimination.

46. Chapter III of the report was presented in terms of specific articles of the Convention. In that part too it was acknowledged, contrary to certain claims in earlier reports, that discrimination had been very pronounced in Chilean history. It was, however, emphasized that no discrimination was countenanced by the Constitution and legislation. The indigenous peoples enjoyed the right to vote, the right to basic education, the right to own property, the right to conclude contracts and the other rights to which all

Chilean citizens were entitled. Problems of discrimination were rather to be found at the level of cultural differences and in terms of the right of minorities to be recognized with their specific differences.

47. The action taken by the democratic Government to eliminate infringements of the rights of Chilean indigenous peoples was the subject-matter of chapter II of the report. Section 1 of that Chapter gave details of a proposal for reform of the Constitution, making specific provision in article 1 of the Constitution for the rights of the indigenous peoples. The amendment had been adopted by 90 votes to 1 in the Chamber of Deputies and was at the second stage of approval by Parliament. The Executive had also transmitted ILO Convention No. 169 to Parliament, and at the end of 1991 had submitted to it a new bill on the protection and development of the indigenous peoples which was based on an extensive discussion among the indigenous communities. The bill, whose main elements were set forth in paragraph 67, should be adopted during the current year. The text would mark an important change in the relations between the Chilean State and the indigenous peoples, the aim being to eliminate discrimination in Chile.

48. He also emphasized that, while in theory the indigenous inhabitants benefited from equal access to education, in practice they suffered from economic, cultural, geographical and other forms of discrimination in that field. To remedy that situation, a major programme of scholarships had been launched, starting in 1991. In 1992, 4,500 scholarships had been allocated for secondary, technical, vocational and university education. There were 750 indigenous scholarship-holders at university level, and that figure should increase perceptibly in 1993.

49. Numerous conflicts persisted between the indigenous inhabitants and landowners, who for the most part were the descendants of the colonists to whom the indigenous land had been allocated in the nineteenth century. The Government had established a special commission for the indigenous peoples, which had at its disposal, in particular, a legal service, for which 14 lawyers distributed among the principal indigenous zones were working. The service monitored, without charge, disputes in which indigenous people were involved and which the proposed new legislation would make it possible to resolve more satisfactorily. In that connection, he mentioned a case in which a 30,000-hectare estate in the south of the country, known as "Quinquen",

where there were trees sacred to the indigenous people, had been allocated to the indigenous inhabitants after its purchase by the Government, thus ending a dispute which had gone on for several decades.

50. The development of the indigenous communities was another priority of the incumbent Government. A system had been established by which those communities themselves submitted projects. A fund of almost $3 million, which would be increased, was used to meet the requests of the communities. Currently, 124 projects were at the implementation stage, and a further 200 were to be launched in the coming months.

51. The democratic Government in office had undertaken to eliminate all forms of discrimination. While it was true that certain forms existing in practice and in everyday life were difficult to overcome, and certainly could not be totally eliminated in the short term, it was a matter of the highest priority to continue to make progress in that direction.

52. Mrs. SADIQ ALI, country rapporteur for Chile, first of all welcomed the fact that, in submitting its ninth and tenth reports, Chile had shown its determination to continue its dialogue with the Committee. Unfortunately, the reports still did not comply with the Committee's guidelines. To some extent they supplemented the eighth report (CERD/C/148/Add.4), but they were difficult to assess.

53. The eighth report had been considered against the background of Chile's transition to democracy, after the departure of the Pinochet regime following the referendum of 4 October 1988. The Chilean Government was currently pursuing a programme of constitutional reform, but the latest two reports did not indicate what Constitution was currently in force. It should also be noted that the elected Government did not have a majority in the Senate, since the Pinochet administration had appointed the members of the Senate in such a way as to avoid the adoption of "unpleasant reforms". It was also known that General Pinochet would remain commander of the armed forces and a member of the National Security Council until 1997. The constitutional amendments were thus virtually doomed to failure, since they must be approved by three-quarters of the senators and deputies. Moreover, a wave of violence in the first quarter of 1991 seemed to have restored the initiative to General Pinochet.

54. The report under consideration (CERD/C/196/Add.1) still did not contain a definition of racial discrimination. None the less, it should be noted that, according to paragraph 68 of the document, "racial discrimination has been extremely acute" throughout the country's history. The report also condemned the Pinochet Government's policy of assimilation, which was aimed at forcing the indigenous inhabitants to abandon their culture and their language.

55. On the question of demography, discrepancies were to be noted in the figures given in paragraphs 58 and 65 of the document concerning ethnic groups. She wondered whether in Chilean censuses "ethnic groups" meant the same as "the indigenous population"; it would be desirable to find out the demographic composition of that population. It would also be useful to have information on the existence of a population of African origin in Chile. The historical outline given in the report on the subject of the Mapuches, the Aymaras and the Easter Islanders was very useful, and the same should have been done for all the indigenous groups. The Yamanas were not even mentioned in the report under consideration: had they disappeared? She recalled that the Chilean Government had already been asked to provide up-to-date information on the demographic composition of the population, and the indigenous population in particular (CERD/C/SR.846, para. 45).

56. A reform of indigenous policy was contemplated in Chile. Draft amendments to articles 1 and 19 of the Constitution were mentioned in paragraph 62 of the report. Paragraph 65 referred to a bill designed to ensure respect for the specific rights of 1 million Chileans belonging to the various ethnic groups. It would be useful for the Committee to receive details of the text. She asked whether amendments had already been made to the Constitution. She also asked how ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries was being implemented. Were the indigenous peoples represented in Parliament and in municipal bodies?

57. The Mapuche people continued to campaign for the repeal of Decree No. 2568 of 1979, which allotted land on an individual and unjust basis, as was stated in paragraph 10 of the report. Referring to paragraph 67 (b) of the report, she asked whether it implied that land reform was envisaged. In that connection, it should be pointed out that Chile's land policy was a

matter of concern to the Special Rapporteur of the Commission on Human Rights. She also asked whether the 1979 law mentioned by Chile in its reply concerning the eighth report, a law to which the Mapuches were opposed, would be amended or repealed.

58. The expropriation of Mapuche land was unfortunately continuing. The land of 10,000 Mapuches from the communities of Arunco and Cantin were to be flooded by five hydroelectric dams. Furthermore, the newsletter of the International Work Group for Indigenous Affairs for January-March 1992 stated that a July 1990 decision of the Supreme Court calling for the eviction of the Mapuches from their ancestral land was about to be enforced and that 400 policemen from three provinces had been mobilized to eject 150 indigenous people. The Supreme Court's decision gave the impression that citizens' rights applied according to the racial origin of the person in question.

59. The Aymaras, who lived in the Andean region, had also been deprived of joint titles of ownership, a situation which had led to serious conflicts. It would be useful to learn whether some of those conflicts had been resolved, and through what procedures. According to paragraph 67 (u) of the report, in the case of the Huilliches, their traditional cacique system was to be restored; would that apply to the Aymara people? Decree No. 1122 of 1981 had deprived the Aymara communities of their rights to water supply, which were vital for their agriculture, in order to supply the large mining companies instead. It would be interesting to know how the recently established National Indigenous Development Corporation could resolve that situation. She hoped that information would be provided on that issue in the next report.

60. The number of Easter Islanders was given as 785 persons in paragraph 45 of the report, and as 3,090 in paragraph 58. Which figure was correct? The land ownership rights of that community were still restricted by Decree-Law No. 2885 of 1979, which accorded ownership titles to Chileans. She would like to know how the situation was developing.

61. Turning to the specific articles of the Convention, she requested, in connection with article 2, paragraph 1 (c), that Chile should provide information in its next report on what had been done to amend or rescind any laws and regulations which had the effect of perpetuating racial discrimination. With regard to paragraph 1 (e) of that article, she asked whether there were any integrationist and multiracial movements in Chile. It was a matter for regret that the report contained no information on

article 3. In connection with article 4, she recalled that, according to the eighth periodic report of Chile, a bill had been submitted to Parliament on the implementation of that article. The bill had been under consideration for 16 years. Moreover, the Penal Code and the Code of Penal Procedure contained provisions on legal violations of the rights of the indigenous population, whose status remained ill-defined. It would be useful to know whether those provisions had been amended.

62. With regard to article 5 of the Convention, she noted, in connection with the eviction order against the Mapuches adopted by the Supreme Court in July 1990, that the Supreme Court was still composed of judges appointed under the military dictatorship, and that it continued to curb investigations into past human rights violations, according to an Amnesty International report of 1991, which had also pointed out that the Government was proposing reforms aimed at guaranteeing a fair trial and restricting the jurisdiction of military courts to military offences. Information on those issues would be appreciated.

63. In connection with the economic, social and cultural rights provided for under article 5 (e) of the Convention, it would be interesting to have statistics on education, employment, housing and medical care among the various indigenous groups and in the shanty towns. Some 200,000 Mapuches were crammed into the shanty towns of Santiago, occupying the lowest rung on the social ladder. Overall unemployment had reached 21 per cent under the Pinochet regime: what was the current figure?

64. The information requested by Mr. Ferrero Costa on the implementation of article 6 had still not been provided. It would also be useful to have further details about the National Commission for Truth and Reconciliation, established by President Aylwin. The Commission was said to have found that the judiciary had failed in two crucial respects. First of all, it had rejected hundreds of habeas corpus petitions, response to which would have prevented many cases of disappearances. Furthermore, civil judges were alleged to have abandoned their duty to review the procedures of military courts. Various forms of reparation had been contemplated, but it should not be forgotten that the Supreme Court had upheld the amnesty law adopted under the military dictatorship in 1978, and had dismissed many requests for an

inquiry into human rights violations. In fact, both the Government and the opposition parties now recognized the need for a radical overhaul of the judicial system.

65. In connection with article 7 of the Convention, information was needed on what was being done in the field of education and training to promote awareness of the problems of discrimination among teachers, the police, magistrates and the military. Was the public being informed of the provisions of the Convention and their application? Finally, in connection with article 14, she asked whether the Chilean Government was considering making the declaration provided for under that article.

66. In conclusion, while noting that the new civilian Government was trying to carry out constitutional reforms, she regretted the absence of legislative and other measures to ensure implementation of articles 1, 4, 5 and 6 of the Convention. She asked the Chilean Government to take the necessary steps to resolve the unsatisfactory situations to which she had referred, and expressed the hope that significant progress would be achieved in that direction by the time the next report was submitted.

67. The CHAIRMAN, responding to a request from Mr. Aboul-Nasr, and with the agreement of the Chilean delegation, suspended consideration of the report of Chile in accordance with rule 42 of the Committee's rules of procedure.

68. Mr. Bengoa and Mr. Oyarce (Chile) withdrew.

DRAFT LETTER TO THE CHAIRMAN OF THE COMMISSION ON HUMAN RIGHTS CONCERNING THE SITUATION IN FORMER YUGOSLAVIA

69. At the request of Mr. Ahmadu, the representatives of the press and information services withdrew.

70. Mr. ABOUL-NASR said that he had taken the liberty of interrupting the discussion because of the grave deterioration in the situation in Bosnia and Herzegovina and the request for the convening of the Commission on Human Rights. The Committee was concerned by the issue, and should make its views known. Some of its members had consulted each other and had concluded that the Committee should address a letter to the Chairman of the Commission on Human Rights, through the Secretary-General. They had accordingly prepared a draft letter in English, which read:

"Sir,

The Committee on the Elimination of Racial Discrimination has followed with grave concern the developments taking place in former Yugoslavia. It welcomes the convening of the Exceptional Session of the

United Nations Commission on Human Rights to examine the situation arising from the massive human rights violations taking place, particularly in Bosnia Herzegovina, as a result of the policy of 'ethnic cleansing' being carried out by Serb militias. This aspect of the tragic situation is of particular concern to the Committee. The Committee would like to join in expressing alarm at the situation and trusts that the Commission on Human Rights will take expeditious and effective measures at its forthcoming Exceptional Session to put an end to the violations of human rights and human suffering and provide protection for the innocent civilian population. The Committee expresses its readiness to cooperate in this endeavour within the framework of the mandate entrusted to it by the Convention on the Elimination of All Forms of Racial Discrimination."

He said that the text represented a compromise, and expressed the hope that, in view of the urgency of the situation, the Committee could adopt it by consensus.

71. Mr. van BOVEN said that he welcomed the initiative, but suggested that a few minor changes could be made to the text. Firstly, it would be preferable, from a procedural point of view, to address the letter solely to the Chairman of the Commission on Human Rights, rather than to the States members of that body. Secondly, in so far as it was still not known whether the special session of the Commission would take place, in the second sentence of the text, the words "It welcomes" should be replaced by "It would welcome". Thirdly, also in the second sentence, it would be more prudent to delete the words following "ethnic cleansing". Fourthly, he proposed that "will take" should be replaced by "may take" in the fourth sentence of the text. Finally, the adjective "innocent", which preceded the words "civilian population" in the same sentence, seemed to him to be superfluous.

72. Mr. DIACONU fully agreed with the proposed amendments, which he thought worthwhile and necessary, particularly the third one. For his part, he suggested that, in the penultimate sentence of the text, the words "to put an end to the violations" should be replaced by "with a view to putting an end to the violations", which would correspond more closely to the competence of the Commission on Human Rights.

73. Mr. AHMADU said he entirely agreed that the Committee should express its concern at the situation, and was prepared to accept all the amendments proposed by Mr. van Boven. However, he considered, that it would be more

effective to address the letter to the Secretary-General of the United Nations, since the Security Council was the only body with the authority to order a cessation of hostilities.

74. Mr. RECHETOV proposed that, in order not to prejudge the decisions which the Commission on Human Rights might take at its special session, if it were to be held, the following sentence should be inserted in the text, after the second sentence: "The Committee notes the deep concern of the Security Council expressed at the continuing reports of widespread violations of international humanitarian law and, in particular, reports of the imprisonment and abuse of civilians in camps, prisons and detention centres within the territory of the former Yugoslavia and especially in Bosnia Herzegovina."

75. Mr. SHAHI said he was prepared to accept the proposal of Mr. Rechetov and that of Mr. Diaconu. On the other hand, he opposed the deletion of the reference to the Serb militias in the second sentence of the proposed text, since the responsibility of the Serbs for the situation prevailing in Bosnia and Herzegovina was beyond doubt. The Committee was a body of independent experts which had a duty to condemn acts violating human rights and acts of discrimination. The main point was to bring about a cessation of hostilities, and in view of the inaction of the Security Council and the international community he recommended that the Committee should address the proposed letter directly to the Secretary-General of the United Nations, stating very clearly that the situation called for appropriate measures by the Security Council to end the conflict.

76. Mr. GARVALOV said he did not believe that the convening of a special session of the Commission on Human Rights would serve to relieve the Security Council of responsibility for the issue. He agreed to the text proposed by Mr. Rechetov and suggested that it should state that the Committee expected the Commission to take measures to help the United Nations (or the international community) to put an end to the situation.

77. Mr. de GOUTTES thought that the Committee could not remain silent in the face of the grave human rights violations taking place in Bosnia and Herzegovina. The proposed special session of the Commission provided it with an opportunity to make a gesture in that direction.

78. However, the question raised far too serious substantive issues for the Committee to dwell unduly on matters of form. Regretting that the draft letter had been prepared only in English, he none the less found the proposed

text acceptable, as also the supplementary proposal by Mr. Rechetov. Finally, he would favour publication of the letter, in order to make it fully apparent that the Committee was concerned about the problem.

79. Mr. WOLFRUM said he did not think that it was necessary to address the letter to the Secretary-General. He also hoped that the reference to the Serb militias would be retained. Finally, he was in favour of publishing the letter once it had been adopted.

80. Mr. FERRERO COSTA expressed the hope that the Committee would act pragmatically and that it would adopt, without delay and by consensus, a text which in his opinion should be addressed to the Chairman of the Commission on Human Rights and should be published. With regard to Mr. Rechetov's proposal, he would go along with the view of the majority.

81. Mr. SHAHI read out the text of the draft letter, incorporating the amendments proposed by Mr. van Boven (without deleting the reference to the Serb militias), the amendment proposed by Mr. Diaconu, Mr. Rechetov's text, and also some minor changes that he himself was suggesting by which, in the third sentence, "This aspect" would be replaced by "These aspects" and, in the fourth sentence "the Commission on Human Rights will take" would be replaced by "the Commission on Human Rights would take". He invited all members of the Committee to approve that wording.

82. Mr. DIACONU, arguing that, according to some sources of information, the Serb militias did not appear to be the only party involved, suggested that the text should be modified slightly so that "'ethnic cleansing'" in the second sentence would be followed by "which, according to some sources, is being carried out by Serb militias".

83. Mr. SHAHI stressed that the Committee was composed of independent experts who had a duty to put the cause of human rights above any political consideration. How could there be 2.2 million refugees in the region if there was no "ethnic cleansing"? Even though the Croats might also have committed reprehensible acts, it was well known who was responsible for the situation.

84. Mr. SONG Shuhua shared Mr. Diaconu's view, and said he would be prepared to accept the proposed wording if it were the subject of consensus.

85. Mr. van BOVEN agreed that responsibility for the situation should not be laid entirely at the door of the Serbs. He therefore thought it more prudent to delete the reference to the Serb militias, but would not insist on the point.

86. Mr. ABOUL-NASR said that although he wholeheartedly agreed with Mr. Shahi's point of view, he would agree to delete the contentious reference in the interests of reaching a consensus.

87. Mr. SHAHI and Mr. AHMADU said that they would abstain on the issue.

88. A vote was taken by show of hands on the proposal to retain the reference to Serb militias in the second sentence.

89. The proposal was accepted by 11 votes to 1, with 4 abstentions.

90. The draft letter as a whole, as amended, was adopted by consensus.

The meeting rose at 6.35 p.m.